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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

UEQ3612 EQUITY AND TRUSTS I

(All Sections / Groups)

19TH NOVEMBER 2021

Reading Time: 9.15am- 9.30am

Answering Time: 9.30am- 12.30pm

(3 Hours 15 Minutes)

INSTRUCTIONS TO STUDENT

1. Students will have fifteen minutes during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 pages with 5 Questions only.
3. Attempt **two (2)** questions from **Part A**. Questions **Four** and **Five** are **compulsory**.
All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
 - i. Trustees Act 1949; and
 - ii. Specific Relief Act 1950."Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A
ANSWER TWO (2) QUESTIONS

QUESTION 1

The question surrounding the degree of knowledge required for recipient liability, a type of constructive trust, has attracted “a sustained judicial and extra judicial debate...” as per Nourse LJ in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele [2000] 4 All ER 221, CA*.

Discuss your answer in relation to the arguments surrounding the required degree of knowledge with reference to relevant case law and articles.

(Total: 25 marks)

QUESTION 2

“It is not difficult to fully constitute a trust – any difficulty comes in finding when equity will intervene where the creation of a trust is imperfect in some way and the beneficiaries look to equity to give them enforceable obligations against the property that should have been subject to a perfectly created trust.”

Explain critically the law relating to the enforcement of imperfectly constituted trusts in the light of the above statement, including the impact of the rule that equity will not assist a volunteer.

(Total: 25 marks)

Continued...

QUESTION 3

Terry Jeffords, a famous actor and comedian made a will in April 2019. He appointed his good friend, Gina Linetti, as his executrix. His will contained the following clauses:

- (a) I leave my extensive collection of modern art to Jake Peralta and Amy Santiago. Jake should choose his favourite two paintings. Amy can have whatever's left.

(5 marks)

- (b) RM500,000 to Gina to hold on trust for young talented comedians from the Kuala Lumpur region.

(4 marks)

- (c) RM100,000 to my brother, Charles Boyle, in the optimistic expectation that my nephews Scully and Hitchcock, benefit from my generosity.

(5 marks)

- (d) The residue of my estate to my eldest daughter Cagney.

(3 marks)

In February 2021 Terry received a death threat from an obsessed fan. Fearing for his life, he gathered his family and friends at 'Gelak', his local comedy club to watch him perform his last show before he retired. After the show, he took Lacy (his youngest daughter) aside and while holding her hands, he whispered to her "I want you to have my shares in Nine-Nine Sdn. Bhd. so that you are taken care of when I am no longer here". Sadly, upon packing up his belonging's backstage, Terry was electrocuted by a faulty lightbulb on his mirror and died instantly.

Advise Gina Linetti as to the validity of the above dispositions.

(8 Marks)

(Total: 25 marks)

Continued...

PART B (COMPULSORY)
ANSWER ALL QUESTIONS

QUESTION 4

(a) Mr. and Mrs. Solomon Generous are a well-known couple in town, who actively involved in charity and humanitarian work. To ensure part of their estate are used for charity after the death, they have decided to allocate RM1 Million from their savings for that purpose. By a trust deed dated 25th December 2020, they have made the following provisions:

- (i) 20 per cent to be funded to Rempah Academy for research and development of spice products of the settlor's company;
(4 marks)
- (ii) 30 per cent for the relief of poverty of their family clans;
(4 marks)
- (iii) 30 per cent of the trust fund for the poor fire fighter front liners;
(4 marks)
- (iv) 20 per cent to sick and aged Roman Catholic priest as a gift for their retirement so the young and healthy ones can replace their role.
(4 marks)

Verify the validity of the above provisions.

(b) With reference to the decided cases, elaborate the application of Section 9 of the Government Proceedings Act 1956 in governing Charitable Trust in Malaysia.

(9 marks)

(Total: 25 marks)

Continued...

QUESTION 5

In Secret Trust, Court's equitable jurisdiction is applied in which the relationship between the trustee and beneficiaries exists outside and independently of the will. The trustee is bound by what they may have agreed to in spite the failure of the testator to comply with the formalities under the Wills Act 1959.

Illustrate the above and cite the relevant case law as well as equitable maxims to support your answer.

(Total: 25 marks)

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